

37 at 6-16, 28, 31, 33, 35)]¹⁰ Joan Breisch, Executive Director of the Literacy Council of Reading-Berks, testified that WTVE aired PSAs regularly for her organization and also produced and aired a 30-minute interview program in which she was the sole guest. [Breisch Dep. (Reading Ex. 38 at 4, 11-19, 27-96)] Fred C. Windbeck, Jr., founder and executive director of the Switchback Gravity Railroad Foundation, testified that WTVE produced, at cost, and aired a documentary on efforts to restore the historic Switchback Gravity Railroad loop in Jim Thorpe, Pennsylvania, and also made copies of the documentary available at cost to his organization. The documentary, which won an award from the Pennsylvania Association of Broadcasters and was described by Mr. Windbeck as "timeless" (Windbeck Dep. (Reading Ex. 41 at 17)), was subsequently aired on other stations and cable channels and has been pivotal in the Foundation's publicity and fund-raising efforts. [Windbeck Dep. (Reading Ex. 41 at 7-18, 23-30)]

iv. Special Interest Groups (Children, Elderly, Minorities, Disabled). Phyllis Watts, Administrator of Children's Rights of Pennsylvania/In Search of Missing Children, testified that throughout the license term, WTVE produced and regularly aired one-minute PSAs describing missing children based on photographs and information that she provided. [Watts Dep. (Reading Ex. 28 at 5, 7-13, 20-105)] Ralph Trainer,

¹⁰ "I know [WTVE] did a lot of different [public service] things for a lot of people." [Id. at 15]

Executive Director of Abilities in Motion (formerly Berks County Center for Independent Living), testified that WTVE produced and regularly aired a PSA promoting his organization and its activities. [Trainer Dep. (Reading Ex. 29 at 5-12, 18-58)] Ray M. Schacht, a former freelance producer, testified that he produced "Elderly Update" and "Elderly Report" programs for WTVE in the 1989-94 license term. Those programs addressed issues of importance to senior citizens, such as fraudulent contests and long term care insurance. [Schacht Dep. (Reading Ex. 30 at 4-11, 27-72)] Ronald Rouse testified that he produced "Minority Voices" for WTVE beginning as an 8-minute program in 1994 (planned during the license term but first aired after the license term). [Rouse Dep. (Reading Ex. 35 at 4, #9-12); Testimony of Kimberley G. Bradley (Reading Ex. 8), Appendix W at 32 and 51A]

e. **Compliance With FCC Rules and Policies**

43. Reading complied with all applicable Commission rules and policies during the 1989-94 license term except for the reporting failures described in Reading Exhibit 14. Those reporting failures included the failure to file a copy of Reading's Management Services Agreement with Mr. Parker's company, Partel, Inc. That agreement was disclosed to the Commission in an amendment filed by Reading on February 7, 1992 in connection with its long-form transfer of control application and in 1997-99 ownership reports for Reading. [Reporting Failures, Reading Ex. 14]

44. Reading Exhibit 14 also shows that Reading incorrectly listed certain officers and directors and omitted certain officers and directors in applications and ownership reports filed during the license term. However, Reading filed a correct listing in its annual ownership report filed on March 31, 1994, the last report of the license term. [Reporting Failures, Reading Ex. 14 at 2]

f. **Community Outreach**

45. Notwithstanding WTVE's lack of profitability, WTVE's staff made the station available as a platform for community outreach and self-expression during the 1989-94 license term. As noted above, Rep. Caltagirone testified favorably as to WTVE's record in airing televised reports from local legislators. Rep. Caltagirone testified that neither newspapers nor other television stations generally provided such a forum. [Caltagirone Dep. (Reading Ex. 33 at 12-17)] WTVE's Take 3 program was produced by and featured local high school students, on topics that they and their advisors selected. [Testimony of George Alan Mattmiller, Jr. (Reading Ex. 6 at 8); Bradley Testimony, Tr. 465:22-466:16] WTVE aired announcements of community events through its self-produced Community Calendar, Spotlight 51, Post Script and In The Community Interest announcements. [Testimony of Kimberley G. Bradley (Reading Ex. 8 at 3-4)] Reading also worked with local organizations to produce and air PSAs publicizing the activities of those organizations, in addition to featuring these

organizations in WTVE-produced programs (e.g., In Touch, Community Outreach, Elderly Update, For The People and Around Our Town). [Id. at 2-6; id., Appendix C at 27] WTVE also provided a local forum through its man-on-the-street interview program (Streetwise). [Id. at 2]

46. WTVE also provided community outreach by assisting local organizations in producing videotapes about their events or organizations, often at cost or less. [Testimony of Kimberley G. Bradley (Reading Ex. 8), Appendix N at 20-21, Appendix P at 19 and at 26-27; Bendetti Testimony, Tr. 1768:7-19, 1769:16-1770:24]

47. WTVE's personnel also participated in local community events such as Kids Fun Day, Police Athletic League events, Toys For Tots, March of Dimes, Reading Mini Grand Prix, Concours d'Elegance, Duryea Days, Girl Scouts/Cub Scouts/Boy Scouts events, St. James Chapel Church events, St. John's Academy events and Daffodil Days. [Bradley Testimony, Tr. 484:13-490:25]

B. Misrepresentation / Lack Of Candor Issue Against Reading - Phase II.

1. Introduction

48. The lack of candor issue¹¹ originated with the July 15, 1999 Motion to Enlarge Issues ("Motion to Enlarge") filed by Adams. In its Motion to Enlarge, Adams urged the addition of the issue on the basis that Reading's President, Micheal L. Parker, had previously filed applications containing, as Adams phrased it, "misleadingly innocent descriptions" of the holdings and legal effect of two prior Commission decisions, Religious Broadcasting Network, 3 FCC Rcd 4085 (Rev. Bd. 1988) [hereinafter Religious Broadcasting], and Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988) [hereinafter Mt. Baker] (these two decisions are jointly referred to herein as the "Previous Decisions" and are included in the record as Reading Ex. 46, Attachments A and B). On August 11, 1999, Reading filed its Opposition and the Mass Media Bureau ("Bureau") filed its Comments to the Motion to Enlarge. On August 23, 1999, Reading filed a reply to the Bureau's Comments and Adams filed a Consolidated Reply to Reading's Opposition and to the Bureau's Comments.

¹¹ The issue here is stated in terms of "misrepresentation and/or lack of candor." For ease of reference the issue is simply identified herein as the "lack of candor issue."

49. On September 2, 1999, the Presiding Judge (“ALJ”) denied Adams’ Motion to Enlarge, Memorandum Opinion and Order, FCC 99M-49 (released September 3, 1999), on the grounds that there had been no showing of intent to deceive and that, “in view of Parker’s basically accurate disclosures and the Bureau’s actual knowledge in 1997 of prior adverse conclusions on Parker’s character, there was no reasonable ability for Parker or Reading to deceive the Bureau.” Id., ¶ 21, at 10.

50. In response to the denial of its Motion to Enlarge, on September 13, 1999, Adams sought permission to appeal (“Request for Permission to Appeal”). In making its request, Adams relied heavily on the argument that “[t]he standard for adding an issue . . . is significantly lower than the standard for actually resolving that issue one way or the other.” [Request for Permission to Appeal, ¶ 17, at 8] On September 27, 1999, Reading filed its Opposition and the Bureau filed its Comments to Adams’ Request for Permission to Appeal and, on October 4, 1999, Adams filed its Consolidated Reply.

51. On October 15, 1999, the ALJ determined that, on the state of the record at the time, there was a sufficient basis to warrant adding the issue to allow further inquiry. Memorandum Opinion and Order, FCC 99M-49 (released October 15, 1999), ¶ 18, at 8. The ALJ, therefore, ordered that the following issue be added:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the

Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Id. at 8. The ALJ further ordered that Adams would bear both the burden of proceeding and the burden of proof with respect to this issue. Id.

52. A hearing was held on this issue beginning on June 12, 2000, and the record was closed on August 18, 2000. Order, FCC 00M-52 (released August 18, 2000). As demonstrated below, the record developed at the hearing on this issue demonstrates a complete absence of deceptive intent by Parker that would support a lack of candor finding against him. The representations at issue were made in reasonable reliance upon the advice of counsel and included all the information requested by the applicable forms. Furthermore, the conclusion that such conduct does not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent. Accordingly, Reading is qualified to remain a Commission licensee.

2. The Previous Decisions

a. Religious Broadcasting

53. The proceedings underlying the Review Board's ultimate decision in Religious Broadcasting involved twelve mutually exclusive applications to construct a new television station in San Bernardino, California. One of the applicants in that proceeding was San Bernardino Broadcasting L.P. ("SBB"). [See Religious Broadcasting, 3 FCC Rcd at 4085 (Rev. Bd. 1988)] Parker was a paid consultant for SBB. [Parker Testimony, ¶ 5 (Reading Ex. 46), Tr. 1967:1-17, 2081:11-24]

54. As part of the Religious Broadcasting proceeding, the ALJ had added a real-party-in-interest issue regarding Parker's involvement in SBB's activities. [See Religious Broadcasting, 2 FCC Rcd 6561, ¶ 2 (ALJ 1987)] On that issue, the ALJ found that:

The evidence of record requires a negative finding against [SBB] on the real party-in-interest issue, mandating [SBB's] disqualification. In the event, however, that such a penalty is found to be too harsh on review, the Presiding Judge reaches the additional conclusion that [SBB] is not entitled to any integration credit for its proposal to integrate Ms. Van Osdel. Her past behavior in relying virtually totally on others makes it very unlikely that she will exercise control over the affairs of the station to a degree that would entitle her proposal to an integration credit.

[See Religious Broadcasting, 2 FCC Rcd 6561, ¶ 60] The ordering clause of that decision specifically found SBB not to be qualified and, therefore, dismissed SBB's application. [See Religious Broadcasting, 2 FCC Rcd 6561, ¶

324] Thereafter, SBB, along with eleven other applicants, filed timely exceptions to the ALJ's Initial Decision; accordingly, pursuant to Section 1.276(d) of the Commission's Rules, the ALJ's initial decision never became effective. [See 47 C.F.R. § 1.276(d); Religious Broadcasting, 2 FCC Rcd at 6595, n.19] At approximately that same time, SBB fired Parker. [Parker Testimony, Tr. 1938:4-21; 1967:1-17, 2010:21-2011:8, 2081:19-24]

55. Upon review, the Review Board dealt solely with comparative criteria and affirmed only that part of the ALJ's decision that refused to award integration credit to SBB.¹² [Religious Broadcasting, 3 FCC Rcd at 4090, ¶ 16 (stating in relevant part: "We affirm, *con brio*, the ALJ's refusal to award 'integration' credit to SBB"), and 4103-04, ¶ 63 (ordering clause makes no distinction between SBB's application and other applications denied on comparative grounds)] In denying integration credit to SBB, the Review Board held that SBB's putative structure "was and remains a travesty and a hoax" and that "SBB is a transpicious sham." [Id., 3 FCC Rcd at 4090, ¶ 16, and 4091, ¶ 18]

56. SBB did not challenge the Review Board's resolution of the real-party-in-interest issue. [Parker Testimony, Tr. 2065:17-24, 2066:17-2067:16, 2068:17-2069:7, 2070:1-16, 2084:8-13; Religious Broadcasting, 5 FCC Rcd

¹² The Review Board confirmed this interpretation later that same year. [See Doylan Forney, 3 FCC Rcd 6330, n.1 (Rev. Bd. 1988) (in Religious Broadcasting, "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit")]

6362, ¶ 2 (Reading Ex. 46, Attachment C)] Instead, SBB agreed to dismiss its application in exchange for payment of an \$850,000 settlement. [Parker Testimony, ¶ 5 (Reading Ex. 46); Religious Broadcasting, 5 FCC Rcd 6362, ¶ 2] The Review Board subsequently approved the settlement. [Parker Testimony, ¶ 5 (Reading Ex. 46); Religious Broadcasting, 5 FCC Rcd 6362, ¶ 4] Parker did not share in any of the settlement proceeds. [Parker Testimony, Tr. 1945:7-8, 1967:12-17, 2010:21-2011:8, 2070:18-21]

b. Mt. Baker Broadcasting

57. In Mt. Baker, the Commission initially issued Mt. Baker Broadcasting Co., Inc. ("Mt. Baker"), of which Parker was an officer, director, and a shareholder, a construction permit for KORC(TV), Anacortes, Washington. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 2 (1988)] In December 1986, however, after having granted three prior extensions of the date to complete construction, the Commission's staff denied Mt. Baker's request for a further extension of time and cancelled its construction permit. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 2]

58. On reconsideration, the staff reinstated Mt. Baker's construction permit on the condition that it file a license application within ten days and set a new expiration date for the reinstated construction permit. [See Mt.

Baker, 3 FCC Rcd 4777, ¶ 3] Mt. Baker, however, failed to file its license application. Upon expiration of the reinstated construction permit, a Commission inspector conducted an inspection which showed that KORC's facilities were constructed at variance from its construction permit. The Commission's staff concluded that Mt. Baker was operating without authority, cancelled the permit and ordered the station to cease operations. [See Mt. Baker, 3 FCC Rcd 4777, ¶ 4] In rejecting Mt. Baker's request for a forfeiture rather than cancellation of the construction permit, the Commission stated that "the facts clearly indicate an effort to deceive the Commission." [See Mt. Baker, 3 FCC Rcd at 4778, ¶ 8]

59. Mt. Baker's subsequent petition for reconsideration was denied and, thereafter, Mt. Baker applied for and was denied review. [See Mt. Baker, 3 FCC Rcd at 4778, ¶ 10] The case was never designated for hearing and no further enforcement action was ever initiated.

3. The Disclosures of the Previous Decisions.

60. Subsequent to the issuance of the final decisions in Religious Broadcasting and Mt. Baker, entities in which Parker held an interest filed applications with respect to: WHRC-TV, Norwell, Massachusetts (BTCCT-910724KG) (the "Norwell Application") [Reading Ex. 46, Attachment E]; WTVE(TV), Reading, PA (BTCCT-911113KH) (the "Reading Application" [Reading Ex. 46, Attachment F]; KVMD(TV), Twentynine Palms, CA

(BTCCT-920603KG) (the "Twentynine Palms Application") [Reading Ex. 46, Attachment G]; and KCBI, Dallas, Texas (BALIB-9208100M) (the "Dallas Application") [Reading Ex. 46, Attachment H] In each of those applications, the following question was asked and answered as indicated below:

7. Has the applicant or any party to this application had any interest in or connection with the following:

| | Yes | No |
|--|-----|----|
| (a) an application which has been dismissed with prejudice by the Commission? | X | |
| (b) an application which has been denied by the Commission? | X | |
| (c) a broadcast station, the license of which has been revoked? | | X |
| (d) an application in any Commission proceeding which left unresolved character issues against the applicant? | | X |
| (e) if the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. ____ the following information: | | |
| (i) Name of party having such interest; | | |
| (ii) Nature of interest or connection, giving dates; | | |
| (iii) Call letters of stations or file number of application, or docket number; | | |
| (iv) Location. | | |

[hereinafter "Question 7."] [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at

F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

61. Each applicant, having affirmatively answered that it (or another party to the application) had had an interest in or been connected with “an application which ha[d] been dismissed with prejudice by the Commission” and “an application which ha[d] been denied by the Commission,” was then required to state in an attached exhibit: the name of the party having such interest; the nature of interest or connection, giving dates; the call letters of stations or file number of application, or docket number; and its location. [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

62. As so required, each applicant attached the necessary exhibit and provided the specifically requested information. Each of the exhibits contained virtually the same description of the Religious Broadcasting and Mt. Baker decisions:

Although neither an applicant nor the holder of an interest in the application to the proceeding, Micheal Parker’s role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership (“SBB”), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB’s integration and

diversification credit, Mr. Parker was deemed such. See e.g. Religious Broadcasting Network et al., FCC 88R-38 released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcasting Network, et al., FCC 90R-101 released October 31, 1990.

* * *

In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.

[See Norwell Application (Reading Ex. 46, Attachment E at E30-31); Reading Application (Reading Ex. 46, Attachment F at F30); Twentynine Palms Application (Reading Ex. 46, Attachment G at G20-21); Dallas Application (Reading Ex. 46, Attachment H at H24-25)]¹³

63. On October 22, 1992, an amendment to the Dallas Application (the "Dallas Amendment") was filed, stating:

Two If By Sea Broadcasting ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and applicants had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had

¹³ Similar descriptions of the Mt. Baker decision had previously appeared in a 1989 Form 315 application involving KWBB(TV), San Francisco, California [see West Coast United Application (Reading Ex. 46, Attachment I)] and in two 1989 applications for low power television stations (the "1989 Applications"). None of the 1989 Applications, however, referenced the Religious Broadcasting decision. [Parker Testimony, ¶ 11 and n.1 (Reading Ex. 46); West Coast United Application (Reading Ex. 46, Attachment I)]

been added or requested against those applicants when those applications were dismissed.

[Parker Testimony, ¶ 14 (Reading Ex. 46); Dallas Amendment (Reading Ex. 46, Attachment J)]

4. Advice of Counsel

64. During the late 1980's and early 1990's, Reading and other companies in which Parker had an interest generally used attorneys Bob Beizer, Clark Wadlow, and various of their associates, including Paula Friedman, as communications counsel. [Parker Testimony, ¶ 6 (Reading Ex. 46), Tr. 1896:4-1899:15; Wadlow Testimony, Tr. 1797:25-1803:3; Friedman Testimony, Tr. 2103:1-23] Mr. Wadlow specializes in communications law, practicing largely before the Federal Communications Commission and the courts with respect to communications related issues, and has so specialized for approximately 28 years. [Wadlow Testimony, Tr. 1798:21-1799:9] Both Mr. Beizer and Mr. Wadlow have served terms as President of the Federal Communications Bar Association and are highly regarded communications lawyers. [Parker Testimony, ¶ 6 (Reading Ex. 46); Wadlow Testimony, Tr. 1799:13-19] Ms. Friedman specialized in communications law and served as Executive Director of the Federal Communications Bar Association from February 1994 through July 1999. [Friedman Testimony, Tr. 2103:4-18] Messrs. Wadlow and Beizer were originally affiliated with Schnader, Harrison, Segal & Lewis, a Philadelphia law firm, and in early 1990, moved

their practices to Sidley & Austin. [Parker Testimony, ¶ 6 (Reading Ex. 46); Wadlow Testimony, Tr. 1802:8-1803:3] (For ease of reference, regardless of time frame, these communications counsel will be referred to as the “Sidley Attorneys.”)

65. The Sidley Attorneys were aware of the Mt. Baker and Religious Broadcasting cases and, in fact, represented Inland Empire Television, another applicant in the Religious Broadcasting case. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 1941:19-1942:3, 1950:5-7; Wadlow Testimony, Tr. 1812:4-12, 1858:2-22] The Sidley Attorneys advised Parker that neither the Mt. Baker proceeding nor the Religious Broadcasting proceeding raised any character issues as to his qualifications to hold Commission licenses. [Parker Testimony, ¶¶ 7-8 (Reading Ex. 46), Tr. 2007:20-2008:17, 2012:20-2013:1, 2024:13-2025:14; Wadlow Testimony, Tr. 1806:10-24, 1830:15-21, 1854:23-1855:16; Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D)]

66. Specifically, with respect to the Religious Broadcasting proceeding, attorney Wadlow advised Parker, in writing, that the case did not present questions as to Mr. Parker’s qualifications. [Parker Testimony, ¶ 7 (Reading Ex. 46), Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D); Wadlow Testimony, Tr. 1806:10-24, 1830:15-21, 1854:23-1855:16] Parker believes that he requested that letter in response to someone’s questions as to his qualifications in connection with

Reading's efforts to emerge from bankruptcy. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 2000:1-2003:20; see also Wadlow Testimony, Tr. 1865:25-1866:24] There is no dispute that this letter was prepared for independent business reasons unrelated to any Commission application. [Parker Testimony, Tr. 2016:11-2019:13, 2024:13-2026:4]

67. In addition to what is indicated in his letter, attorney Wadlow orally advised Parker that the Review Board's decision dealt only with SBB's comparative qualifications and did not hold SBB to be disqualified. [Parker Testimony, ¶ 8 (Reading Ex. 46), Tr. 1992:24-1993:7, 1996:5-11, 2024:13-2025:14] Wadlow, at no time, either before or after his February 18, 1991, letter to Parker, advised Parker that the Religious Broadcasting case presented questions as to Mr. Parker's qualifications. [Wadlow Testimony, Tr. 1862:9-15]

68. Parker's and Wadlow's understanding of the legal implications of Religious Broadcasting was further confirmed when the Review Board approved a settlement payment of \$850,000 to SBB, because they believed that the Commission's rules did not permit a disqualified applicant to receive a settlement payment. [Parker Testimony, ¶ 8 (Reading Ex. 46), Tr. 1932:11-22, 1933:20-1934:6, 1935:17-1936:5; Religious Broadcasting, 5 FCC Rcd 6362 (Rev. Bd. 1990) (Reading Ex. 46, Attachment C); see also Wadlow Testimony, Tr. 1822:25-1823:9, 1829:19-1830:2, 1830:15-21, 1854:23-1855:16] This belief was correct. [See SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir.

1999) (affirming Commission decision rejecting a proposed settlement in which a party disqualified on real-party-in-interest grounds would have received a monetary payment; court distinguishes Allegan County Broadcasters, 83 FCC 2d 371 (1980), on the ground that Allegan involved a pending, untried issue before an ALJ, not an issue that had been through a hearing and decided adversely)]

a. **Religious Broadcasting**

69. The Religious Broadcasting disclosure first appeared in the Norwell Application filed July 24, 1991. [Parker Testimony, ¶ 12 (Reading Ex. 46); Norwell Application (Reading Ex. 46, Attachment E)] Mr. Parker did not draft the original language of the Religious Broadcasting disclosure and believes that it was written by an attorney. [(Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17] The attorneys listed on the Norwell Application were Brown, Nietert & Kaufman on behalf of Nick Maggos, the transferor, and Marvin Mercer on behalf of Parker's company (TIBS), the transferee. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1897:12-1898:18, 1950:23-1951:6; see Norwell Application (Reading Ex. 46, Attachment E); Kravetz Testimony, Tr. 2342:6-2344:18] Marvin Mercer is a business lawyer and bankruptcy lawyer who was also representing Reading at the time. [Parker Testimony, ¶ 13 (Reading Ex. 46)] Mr. Mercer represented Parker's company, TIBS, in the transaction with Mr. Maggos. [Parker Testimony,

¶ 13 (Reading Ex. 46)] Parker believes that it is possible that Mercer prepared the exhibit with input from the Sidley Attorneys and/or Brown, Nietert & Kaufman. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17]

70. Parker did review the Norwell Application, including the exhibit responding to Question 7, and approved it based on the prior advice he had from the Sidley Attorneys that the Religious Broadcasting proceeding did not present an issue as to his qualifications. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 2024:13-23] Once the description had been prepared and used in an application that was deemed acceptable by the Commission, it was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17; see generally Friedman Testimony, Tr. 2107:5-2109:17]

71. As for the absence of any reference to Religious Broadcasting in the 1989 Applications, those applications were prepared by the Sidley Attorneys, who were aware of and involved in the Religious Broadcasting case, and Parker relied on their decision with respect to the content of the 1989 Applications. [Parker Testimony, ¶ 11, n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1949:21-1950:22; see West Coast United Broadcasting Co. (“West Coast United”) Application (Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:7] In that regard, the Question 7 exhibit to the West Coast United Application (Exhibit 3) was

prepared by one of the Sidley Attorneys, most likely William Andrle, and reviewed by Wadlow. [Wadlow Testimony, Tr. 1863:19-1865:3] Wadlow, however, does not recall why the West Coast United Application did not mention Religious Broadcasting. [Wadlow Testimony, Tr. 1863:19-1865:7] In any case, regardless of why references to Religious Broadcasting were not included in the 1989 Applications, Parker relied on his counsel for their preparation and their application of legal judgment in doing so. [Parker Testimony, ¶ 11 n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1942:13-20]

b. **Mt. Baker**

72. The Mt. Baker disclosure first appeared in a March 2, 1989, West Coast United application prepared by the Sidley Attorneys [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 2012:20-2013:1; West Coast United Application (Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:3] In that regard, West Coast United relied upon the Sidley Attorneys to determine what was required to respond to that application's Question 7. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 1949:21-1950:22] In particular, Parker reviewed the description prepared by counsel but did not second-guess the attorneys' judgment about what information to provide. [Parker Testimony, ¶ 11 (Reading Ex. 46); Tr. 1941:19-1942:20, 1949:21-1950:22]

73. Again, once the narrative had been prepared and used in an application that was deemed acceptable by the Commission, the narrative was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 2012:20-2013:1; see generally Friedman Testimony, Tr. 2107:5-2109:17]

c. The Dallas Amendment.

74. During the processing of the Dallas Application, Andree Ellis, the Commission staff person reviewing the application, requested further information about Mr. Parker's dismissed applications. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1975:5-9, 1976:2-8; Kravetz Testimony, Tr. 2354:17-2355:2; Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)] At the same time Ms. Ellis also requested similar information from the assigning party to the Dallas Application, Criswell Center for Biblical Studies. [Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(d) (Enforcement Bureau Ex. 2)] Ms. Ellis requested that each party file an amendment stating whether basic character issues had been sought or added against any of the applications identified as dismissed or denied. [Id., ¶ (c) - (d)] These requests were made simply as part of her usual custom and practice of requesting amendments in all cases where an applicant identifies a prior FCC application that had been dismissed. [Stipulation Concerning the

Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)] The point of this practice appears to have been to clarify the language in Question 7(d) ("left unresolved character issues against the applicant") to mean either requested issues or added issues that had not been resolved.

75. In response to that request, either Parker or his assistant, Linda Hendrickson, asked Brown, Nietert & Kaufman to assist the applicant, TIBS, in determining what was needed and preparing the amendment. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1977:16-23; Kravetz Testimony, Tr. 2354:17-2355:9] Thereafter, Eric Kravetz of Brown, Nietert & Kaufman called either Linda Hendrickson or Parker about the information requested. [Parker Testimony, ¶ 14 (Reading Ex. 46); Kravetz Testimony, Tr. 2354:17-2355:16]

76. In reliance upon the previous advice from the Sidley Attorneys about the Mt. Baker and Religious Broadcasting proceedings, Hendrickson or Parker indicated that there were no unresolved character issues pending when the applications to which Parker was a party were dismissed. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1983:1-4, 2065:17-24, 2066:17-23; Kravetz Testimony, Tr. 2354:17-2355:16, 2356:6-23] Kravetz then prepared the amendment, which Parker signed and returned to be filed with the Commission. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1983:5-9, 2030:14-22; Kravetz Testimony, Tr. 2354:17-2356:23; Stipulation Concerning

the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)]

C. Abuse of Process Issue Against Adams – Phase III

1. Monroe Communications Corporation

77. Monroe Communications Corporation (“Monroe”), was an Illinois corporation created in 1982 for the purpose of challenging the license renewal of Video 44, WSNS-TV, in Chicago, Illinois (“Video 44”). [Joint Request for Approval of Settlement Agreement (Reading Ex. 19); Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22); November 22, 1999 Declaration of Howard Gilbert (“Gilbert Decl”), ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 2516:16-18] With one exception, all of the principals of Adams were also principals of Monroe. [Gilbert Testimony, Tr. 996:18-23]

78. The primary purpose of the Monroe application was to challenge the use of Channel 44 as a subscription television station. [Gilbert Decl., ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 1112:14-20, 1116:15-18, 1117:10-13] During the course of its challenge, Monroe discovered that Video 44 was airing indecent or obscene programming. [Gilbert Testimony, Tr. 1116:19-25] Monroe was represented in the Video 44 challenge by Bechtel & Cole (“B&C”). [Monroe/Bechtel & Cole Fee Arrangement Letter (Reading Ex. 20)]

79. The Commission granted Monroe's competing application in October 1990 and denied Video 44's motion for reconsideration in August 1991. See Harrisclope of Chicago, Inc., 5 FCC Rcd 6383 (1990), recon. denied, 6 FCC Rcd 4948 (1991). At the time, WSNS-TV was worth in excess of \$50 million. [Gilbert Testimony, Tr. 1130:22-1131:2] Monroe, however, never constructed or operated the station. [Gilbert Testimony, Tr. 2516:24-2517:7] Upon obtaining an FCC decision granting its application, Monroe maintained that it became concerned that it would not be able to obtain "Spanish language" programming for the station. [Gilbert Decl., ¶¶ 5-6 (Reading Ex. 24)] In light of that concern, and during the pendency of Video 44's appeal, Monroe agreed to settle with Video 44 and withdraw its application. [Gilbert Decl., ¶¶ 5-6 (Reading Ex. 24)]

80. Monroe never attempted to produce its own "Spanish language" programming. [Gilbert Testimony, Tr. 1127:18-1128:20] Monroe never attempted to obtain any other type of programming as a temporary measure until it could obtain a source of "Spanish language" programming. [Gilbert Testimony, Tr. 1129:10-1130:10]

81. Monroe received in excess of \$17 Million from Video 44 in settlement of that comparative renewal challenge. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 5 (Reading Ex. 19 at 12-13); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2)] The Monroe settlement was approved by the Commission by Order, FCC